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7 Attorneys for Defendant  
United States Fire Insurance Company

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 COPART INC.,

13 Plaintiff,

14 vs.

15 CRUM & FORSTER INDEMNITY  
COMPANY<sup>1</sup>, UNITED STATES FIRE  
16 INSURANCE COMPANY, and DOES 1-10,

17 Defendants.

18 AND RELATED COUNTERCLAIM.  
19

Case No.: C 07 02684 CW (EDL)

**U.S. FIRE'S NOTICE OF AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF ITS  
MOTION TO COMPEL COURT  
APPROVED SITE INSPECTIONS**

Date: September 16, 2008  
Time: 2:00 p.m.  
Location: Courtroom E, 15<sup>th</sup> Flr.  
Magistrate Judge Elizabeth D. Laporte

20 **I. NOTICE OF MOTION**

21 On September 16, 2008 at 2:00 p.m. or as soon thereafter as the matter may be heard in  
22 the above-referenced Court located at 450 Golden Gate Avenue, San Francisco, California  
23 94102, defendant U.S. Fire Insurance Company will move this Court for an order compelling  
24 plaintiff Copart Inc. to cooperate with site inspections at two yards in Florida pursuant to the  
25 Court's previous order dated June 25, 2008.

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27  
28 <sup>1</sup> Dismissed by Order Upon Stipulation (6/15/07)

1 This motion is made on the grounds that the site inspections were ordered by the Court,  
2 no deadline was set for completion of the inspections, and the refusal to cooperate in scheduling  
3 and conducting such inspections is without any justification.

## 4 **II. INTRODUCTION**

5 This Court previously ordered that defendant U.S. Fire was entitled to inspect three  
6 Copart yards. No deadline was set for the inspections by Judge Laporte's order, or by Judge  
7 Wilken's separate order regarding discovery deadlines. No deadline was agreed between the  
8 parties. Nevertheless, Copart refuses to cooperate in scheduling the remaining two inspections  
9 in Florida, claiming the deadline has passed. Copart's unwillingness to comply with the Court's  
10 orders is unreasonable and without justification. The remaining two inspections should proceed  
11 as ordered by the Court.

### 12 **A. Case Background and Issues**

13 Copart provides vehicle suppliers such as insurance companies with a range of services  
14 to process and sell salvage vehicles through auctions, including damaged vehicles deemed a  
15 total loss for insurance or business purposes. U.S. Fire insured Copart under a series of  
16 commercial property policies over the period 2003 to 2007. As part of the initial issuance of the  
17 policy in 2003, and with each subsequent renewal, Copart's insurance broker (Marsh) submitted  
18 statements listing locations owned or operated by Copart and indicating the nature and values of  
19 exposures at those locations. Based on that information, U.S. Fire assessed the risk and  
20 calculated the appropriate premium for each policy.

21 A location identified as "Yard 105" was first reported to U.S. Fire in the statement of  
22 values dated September 1, 2004 submitted by Marsh with an invitation for U.S. Fire to offer  
23 terms for the renewal of Copart's insurance. The September 1, 2004 statement of values  
24 described Yard 105 as "20.288 acres" in "Hialeah, FL" and did not describe any buildings at the  
25 location. Nor did the September 1, 2004 statement of values state any values for any buildings,  
26 contents, computer equipment, contractor's equipment, inventory, or business interruption/extra  
27 expense exposure at Yard 105. From the statement, the location appeared to be an empty yard  
28 presenting no property insurance risks. Because no values were reported for the yard, no

1 premium was charged for the yard.

2       The first report to U.S. Fire of any values for any risks at Yard 105 was an email dated  
3 August 10, 2005 advising that Yard 105 now had inventory worth \$1.3 million. In response to  
4 the report, U.S. Fire charged and received an additional premium for the newly reported  
5 inventory values at Yard 105. Shortly thereafter, in connection with the negotiations over the  
6 terms of the 2005-06 Policy, Copart submitted a revised statement of values listing a street  
7 address for Yard 105 and the previously-reported inventory value, but still no values for  
8 buildings, contents, computer equipment, contractor's equipment, or business interruption/extra  
9 expense exposure. Consequently, Copart paid no premium at the inception of the 2005-2006  
10 policy for coverage for any risks at Yard 105 other than the inventory exposure.

11       Nonetheless, On October 28, 2005, Copart (through Marsh) gave notice to U.S. Fire of a  
12 claim for losses caused on or about October 24, 2005 by Hurricane Wilma at three locations in  
13 Florida, including building damage at Yard 105. Because Copart had never reported or paid  
14 premiums other than for inventory at Yard 105, and because any buildings at Yard 105 were not  
15 "Covered Property" as defined in the policy, U.S. Fire declined the claim. In this action, Copart  
16 sues for breach of contract and bad faith. U.S. Fire denies Copart's allegations and is  
17 counterclaiming for negligent misrepresentation of values, not only with respect to Yard 105 but  
18 also with respect to other locations.

19 **B.     The Site Inspections at Issue**

20       In order to evaluate the accuracy of the information provided in the statements of value  
21 and other documents obtained in discovery regarding Copart's assets, U.S. Fire sought to have  
22 its construction expert inspect a random selection of yards in California and Florida. In its Order  
23 dated June 25, 2008, Judge Laporte confirmed that U.S. Fire could proceed with three such  
24 inspections. The Court's order directed U.S. Fire to notify Copart of the three locations it  
25 planned to inspect and the name of the designated consultant who would perform the  
26 inspections. The Order also directed the parties to meet and confer regarding a schedule for and  
27 scope of the inspections. Judge Laporte's order did not set any deadline for completion of the  
28

1 site inspections.<sup>2</sup>

2 Nor did Judge Wilken's Order Granting Stipulation Re Extension of Discovery Deadline  
3 for Completion of Depositions dated June 27, 2008 set any deadline for the site inspections.

4 Rather, Judge Wilken's Order acknowledged Judge Laporte's decision to allow three  
5 inspections as follows:

6 Site inspections requested by defendant have not yet occurred due  
7 to plaintiff's filing of a motion for a protective order, which was  
8 set for hearing before Magistrate Judge LaPorte on June 17, 2008.  
9 Judge LaPorte granted the motion for protective order in part and  
10 allowed USFIC to make site inspections of three of the locations  
11 designated in its first request.

12 The parties therefore agree to the following deadlines:

13 Completion of fact discovery for depositions only: July 18, 2008.

14 Deadline for expert witness disclosure: July 18, 2008.

15 Deadlines for three site inspections requested by USFIC to be  
16 determined by agreement of the parties.<sup>3</sup>

17 The parties subsequently met and conferred regarding inspections at one yard in  
18 California and two in Florida to be conducted by U.S. Fire's designated expert.<sup>4</sup> Counsel for  
19 Copart specifically requested that no inspections be scheduled prior to the filing of Copart's  
20 motion for summary judgment on July 10, 2008.<sup>5</sup> The first inspection was conducted on July  
21 11, 2008 at Yard 6 in San Martin, California by agreement of the parties.<sup>6</sup> Scheduling for the  
22 other two Florida inspections was temporarily delayed to accommodate U.S. Fire's expert's  
23 schedule.<sup>7</sup> When U.S. Fire's counsel contacted counsel for Copart to schedule the Florida site

24 <sup>2</sup> Order Granting in Part Plaintiff Copart, Inc.'s Motion for Protective Order dated June 25, 2008  
25 (attached as Exhibit A to Declaration of Judith A. Whitehouse In Support of U.S. Fire's Motion  
26 to Compel Court Approved Site Inspections ("Whitehouse Decl.") filed herewith).

27 <sup>3</sup> Order Granting Stipulation Re Extension of Discovery Deadline for Completion of Depositions  
28 dated July 27, 2008 (attached as Exhibit B to Whitehouse Decl. filed herewith).

<sup>4</sup> See emails between counsel dated June 19, 2008 attached as Exhibit C to Whitehouse Decl.  
Filed herewith.

<sup>5</sup> See ¶ 5 of Whitehouse Decl. filed herewith.

<sup>6</sup> See ¶ 6 of Whitehouse Decl. filed herewith.

<sup>7</sup> See ¶ 7 of Whitehouse Decl. filed herewith.

1 inspections for mid-August, Copart's counsel took the unwarranted position that the deadline for  
 2 conducting the site inspections had passed, and no site inspections in Florida would be allowed,  
 3 despite the fact that there has never been any agreement on a deadline for completing the site  
 4 inspections.<sup>8</sup>

5 **III. COPART'S REFUSAL TO COOPERATE IN**  
 6 **SCHEDULING SITE INSPECTIONS IS WITHOUT**  
 7 **JUSTIFICATION**

8 The Federal Rules of Civil Procedure ensure U.S. Fire's right to request site inspections  
 9 (Fed. R. Civ. P. 34(a)(2)), and to bring a motion to compel those site inspections where the  
 10 request is ignored (Fed. R. Civ. P. 37(a)(3)(B)(iv)). Here, *Copart not only ignores U.S. Fire's*  
 11 *request, but the Court's own order approving the requested site inspections.* In approving three  
 12 site inspections, Judge Laporte did not set a deadline for completion. Moreover, the Order  
 13 Granting Stipulation signed by Judge Wilken specifically states that "Deadlines for three site  
 14 inspections requested by USFIC to be determined by agreement of the parties." There has been  
 15 no agreement on a deadline.

16 Instead, Copart has attempted to unilaterally set such a deadline, having decided that the  
 17 site inspections must have been completed by the expert disclosure deadline. If that were the  
 18 case, the deadline would have been specified, as were other deadlines, in the Order signed by  
 19 Judge Wilken. However, the Order says only that the parties will agree to a deadline. Because  
 20 no agreement on a deadline was made, U.S. Fire is entitled to complete the remaining two  
 21 inspections as approved by the Court.

22 **IV. CONCLUSION**

23 Copart's attempt to unilaterally set a deadline for completion of site inspections is  
 24 unreasonable. Because no such deadline was set by the Court, and no such deadline had been

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28 <sup>8</sup> See emails between counsel dated July 30, 2008 and July 31, 2008 attached as Exhibit D to  
 Whitehouse Decl. filed herewith.

1 agreed upon between the parties, U.S. Fire respectfully requests that its motion to compel the  
2 two additional site inspections approved by the court be granted.

3  
4 DATED: August 7, 2008

5 BULLIVANT HOUSER BAILEY PC

6  
7 By /s/ Judith A. Whitehouse

8 Jess B. Millikan

9 Samuel H. Ruby

10 Judith A. Whitehouse

11 Attorneys for Defendant United States Fire  
12 Insurance Company  
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